

HAMPTON ZONING BOARD OF ADJUSTMENT
MINUTES – *Draft*
October 16, 2014

Members Present

Bryan Provencal, Chairman
Bill O'Brien, Vice Chairman
Norma Collins, Clerk
Tom McGuirk
Ed St. Pierre

Others Present

Mark Gearreald, Town Counsel
Joan Rice, Secretary

Chairman Provencal called the meeting to order at 7:00 p.m.

The Pledge of Allegiance was said.

Chairman Provencal introduced the members of the Board.

PETITION SESSION

Chairman Provencal announced that applicants for Petition 49-14, 500 Lafayette Road, have asked for postponement until the November meeting.

Moved by Mr. O'Brien, seconded by Mr. St. Pierre, to postpone the hearing of Petition 49-14, 500 Lafayette Road, until the November 20, 2014 meeting at which time it will be first on the agenda.

Vote: 5 yes, 0 no. Motion passed unanimously.

47-14...The continued Petition of Robert MacDonald for property located at 836R Lafayette Road seeking relief from Article 4.2. The project proposed is a 5,000 SF storage building with exterior bins for material storage on the 2.36 acre vacant parcel. The proposed use is permitted in the Business (B) zoning district, however, the property is a land-locked parcel without any frontage on a public way. A 20' Right-of-Way exists to provide legal access to the site. The project is before the ZBA to seek a variance from the 100' frontage requirement. This property is located on Map 90, Lot 14 and in the B Zone.

Robert MacDonald, Petitioner, and Attorney Kevin Bauerman came forward. Attorney Bauerman said they were looking for relief from the 100' frontage requirement. This is a land-locked parcel. Mr. MacDonald intends to use this for storage for his landscaping business. There will be a building for storage with several storage bays. The access to the property is via an existing easement. Attorney Bauerman said they believe the easement is broad enough for a general right-of way. Without this variance there is no use for this property. There is also the possibility that this is a grandfathered parcel. Attorney

Bauerman went through the five criteria and said he felt they had been met. Regarding hardship, Attorney Bauerman said this is an existing lot of record without access on a public way. Hardship can be found where there are similar non-conforming uses in the neighborhood. Within a couple of hundred feet there are properties that don't meet the 100 foot frontage requirement. The hardship requirement is met.

Questions from the Board

Mr. McGuirk asked what the use of the land was when the easement was given. Attorney Bauerman replied that it was for gravel and similar materials. Mr. McGuirk asked if the petitioner had talked to the owners of this easement. Attorney Bauerman said he had. Attorney Bauerman said this easement was probably given for access for graveling. The easement says it can be used as a right-of-way for trucks. Negotiating with the land owners has not been successful. Mr. McGuirk said it seems as if this might have to be decided in court.

Ms. Collins asked what the petitioner would do if this petition is denied. Attorney Bauerman said they would move on. Chairman Provencal asked if this property could still be used if a structure is not built on the property. Attorney Bauerman said yes. Mr. O'Brien said he would like to hear from the land owner who owns the easement.

Mr. St. Pierre asked if there would be any retail component to this business. Mr. MacDonald said materials could be picked up there. Mr. St. Pierre asked about grandfathering. Attorney Bauerman said they believe the lot is grandfathered for dimensional requirements.

Attorney Gearreald said the Board is considering this in the context of a proposed use. He asked what would be the use of the building. Mr. MacDonald replied it would be used for storage of materials and equipment. Attorney Gearreald asked if it would be used for sales. Mr. MacDonald said no. Sales would be through his house. The sole purpose of the building is to buy materials and store them.

Comments from the Audience

Lyman McCrea came forward. He said he is the owner of Lots 19 and 22. He said this property had a deed with an easement in 1953. He bought his property in 1992 and 1993 and did a thorough check. The 1953 deed has the easement. In 2000 the property was used as a staging area for the Route 1 project.

Attorney Derek Durbin came forward. He said he was representing NS Realty Trust. Attorney Durbin said he felt it was beyond the purview of this Board to be considering this petition. The owner of the property is John Woodworth. This is treated as a buildable lot.

Therefore the grandfathering doesn't count. Attorney Durbin said the petitioner is asking the Board to call this "frontage". There is no frontage. It is land-locked. The Town cannot issue a building permit for a lot that does not have frontage. Even if this Board granted the variance, there is no legal way for them to proceed. If it is said that this easement does not exist anymore, it would have to be determined in court. Attorney Durbin also said they do not feel the five criteria have been met. There are children who play in the right-of-way. There are also pedestrians, etc. The use being proposed is incompatible with the area. Vehicles accessing will create dust, emissions, etc. Property values would also be diminished. There is no hardship to the applicant. The applicant does not own the property. This is unique because it is land-locked and completely surrounded by residential dwellings. This is not a reasonable use.

Jay Diener, Conservation Commission, came forward. He said they are concerned about wetlands issues.

Paul Clark, Schooner Landing, came forward. He read a letter from abutters saying the proposed use is not consistent with the public interest. The granting of the variance would change the character of the neighborhood and will create an eyesore. Property values would go down. Mr. Clark said the hardship to the public outweighs the benefit to the applicant.

Florence Gazenchak, abutter, came forward. She presented a petition from owners in the condo association who oppose the project.

Pat West, 6 Tower Drive, said he was opposed to the petition.

Attorney Bauerman said most of the concern presented is about use. This is a permitted use. There is an easement in place for trucks that carry gravel. These are the facts. All these lots were built with this easement on record. Hardship runs to the land, not to the applicant.

Back to the Board

Mr. St. Pierre said he was sensitive to the easement issue and felt that the property owner has a right to access that lot. The key here is intensity. Mr. St. Pierre said a good case has been made for the diminishment of value for surrounding properties. This should lead to denial. The Board cannot grant a variance to a proposal that causes diminishment of value to other properties.

Chairman Provencal said it was out of the purview of the Board to say this would cause diminishment of property values. This is not about use.

Mr. McGuirk said this use could be on the property. This variance is about frontage and the right-of-way is not large enough.

Moved by Mr. McGuirk, seconded by Mr. St. Pierre, to deny Petition 47-14.

Mr. O'Brien asked if the Board would be rendering a decision where you have somebody who owns property who has a right-of-way and somebody who wants to use it. Shouldn't this be resolved in court before coming to this Board?

Attorney Gearreald said he did think it is relevant to consider the use as related to the frontage.

Mr. St. Pierre said he did not believe the access was adequate for the proposed use.

Vote: 4 yes, 1 no (Provencal). Motion passed.

48-14...The Petition of Susan Tetlow Dunbar and J. Michael Dunbar for property located at 44 Timber Swamp Road seeking relief from Article 4.2 (including footnote 22) and 4.3 to reconfigure existing Map 66, Lot 4 and Map 85, Lot 2, having a total area of approximately 8-1/4 acres, into 5 lots, two of which are entirely within the Industrial Zone and which would conform to the Industrial Zone requirements, and three of which would have homes located in the RAA zone and be accessed by a single entrance off Timber Swamp Road for a private drive through the Industrial Zone with a separate branch for each of the three residential lots, which lots would lack the required frontage and width. This property is located on Map 85 and 66, Lot 2 and 4 in the RAA & I Zone.

Mike Dunbar, Petitioner, and Attorney Peter Saari, Casassa & Ryan, came forward. Attorney Saari said these are two large parcels of land on Timber Swamp Road – 8-1/4 acres in total. The proposal is to create three residential lots and to reconfigure the industrial land into two individual lots. There would be a common drive for each of the three residential lots. Attorney Saari went through the five criteria and said he felt they had been met.

Questions from the Board

Mr. O'Brien asked if the two existing buildings would be on the same lot. Attorney Saari said they would. Mr. O'Brien asked about wetlands. Mr. Dunbar said there are none that he is aware of.

Comments from the Audience

Ed Batchelder came forward. He said he was an abutter of the two parcels. Mr. Batchelder said his issue is the impact on the RAA Zone. He said he felt this was a Planning Board issue and should go to the voters.

Bob Knight, 531 Exeter Road, said he felt the creation of these lots with one drive is contrary to the spirit and ordinance and could also change the character of the RAA Zone.

Back to the Board

Mr. O'Brien said he wondered if there was an alternative. Mr. St. Pierre said his issue was in interpreting the zoning regulations. Mr. St. Pierre said he thought there could be a better configuration that could come out of this and that he would abstain from the vote.

Moved by Mr. McGuirk, seconded by Mr. O'Brien, to grant Petition 48-14 with the condition that approval is obtained from the Conservation Commission and the Planning Board.

Chairman Provencal asked the Board if they felt the five criteria had been met. All members agreed that they had with the exception of Mr. St. Pierre.

Vote: 4 yes, 0 no, 1 abstention (St. Pierre). Motion passed.

50-14...The Petition of Dennis E. and Brenda L. Throneburg for property located at 40 Beach Plum Way seeking relief from Section 1.3, 4.5.2 (side setback) and 4.5.3 (rear setback) to change existing contemporary design to traditional New England cottage style while reducing non-conformities within the side setback areas and removing non-conformities from the deed restriction areas. This property is located on Map 134, Lot 56 in the RA Zone.

Attorney Robert Casassa, Casassa & Ryan, came forward. He said he was appearing on behalf of the applicants. Attorney Casassa said the applicants want to renovate the second and third floors. The non-conformities presently on the property will be improved. Attorney Casassa went through the five criteria and said he felt they had been met. Attorney Casassa presented a letter from Mr. & Mrs. Dave Connors, abutters, expressing favor for this proposal.

Questions from the Board

Mr. St. Pierre said this proposal is primarily for aesthetics. Mr. O'Brien asked about air conditioning units. Attorney Casassa said the architect would have to speak to that, but the

applicant does understand about the air conditioning restriction. Mr. St. Pierre asked if there were any wetlands issues. Attorney Casassa said there were not.

Comments from the Audience

There were no comments from the Audience.

Back to the Board

Moved by Mr. McGuirk, seconded by Mr. O'Brien, to approve Petition 50-14 based on the proposed site plan dated 9/15/14.

Chairman Provencal asked the Board if they felt the five criteria had been met. All members agreed that they had.

Vote: 5 yes, 0 no. Motion passed unanimously.

51-14...The Petition of Warren Kelly for property located at 377 Ocean Blvd. seeking relief from Article(s) 4.1.1, 4.4; 4.5.2; 6.1 and 6.3.1 to construct a 5-story 12 unit and a 4-story 6-unit multi-family building toward the front of the parcel, with seven individual 1-1/2 story cottages at the rear of the parcel, for a total of 25 units requiring relief for height, lot area, parking and side setback. This property is located on Map 265, Lot 20 in the BS Zone.

Warren Kelly, Petitioner, Joe Coronati, Jones & Beach, and Attorney Peter Saari came forward. Attorney Saari said this is a long, narrow lot. The two larger buildings would be on Ocean Avenue and the smaller cottages out back. Each cottage will have its own parking space. This property has been vacant for a long time. The height is 50 feet to the top of the living space and 59 feet to the roof. Attorney Saari went through the five criteria and said he felt they had been met.

Questions from the Board

Mr. McGuirk said he really liked this re-design. Mr. O'Brien said he preferred the previous plan although he has no problems with this plan.

Comments from the Audience

There were no comments from the Audience.

Back to the Board

Mr. St. Pierre asked about pervious surface. Mr. Coronati said there is 75%.

Moved by Mr. O'Brien, seconded by Ms. Collins, to approve Petition 51-14.

Chairman Provencal asked the Board if they felt the five criteria had been met. All members agreed that they had.

Vote: 5 yes, 0 no. Motion passed unanimously.

BUSINESS SESSION

Approval of Minutes

Moved by Mr. O'Brien, seconded by Mr. St. Pierre, to approve the Minutes of September 18, 2014 as amended.

Vote: 4 yes, 0 no, 1 abstention (Provencal). Motion passed.

Adjournment

Moved by Ms. Collins, seconded by Mr. McGuirk, to adjourn the meeting at 10:50 p.m.

Respectfully submitted,

Joan Rice
Secretary